

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

NOV 04 2016

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORKLAWRENCE K. BAERMAN, CLERK
ALBANYErnestine Banks Plaintiff(s)

vs.

Avis Budget Group Defendant(s)

Civil Case No.:

1:16-CV-1320

CIVIL COMPLAINT
PURSUANT TO
TITLE VII OF THE
CIVIL RIGHTS ACT,
AS AMENDED

(MAD/DJS)

Plaintiff(s) demand(s) a trial by: ☐ JURY ☒ COURT (Select only one).

JURISDICTION

1. Jurisdiction is conferred on this court pursuant to 42 U.S.C. § 2000e-5.

PARTIES

2. Plaintiff:

Ernestine Banks

Address:

587 BroadwayApt. Q6Menands, NY 12204

Additional Plaintiffs may be added on a separate sheet of paper.

3. a. Defendant:

Avis Budget Group

Official Position:

Address:

6 Sylvan WayParsippany, NJ 07054

b. Defendant: _____

Official Position: _____

Address: _____

4. This action is brought pursuant to:

☒ Title VII of the Civil Rights Act of 1964, as amended, codified at 42 U.S.C. § 2000e *et seq.*, and the Civil Rights Act of 1991, for employment discrimination based on race, color, religion, sex or national origin.

☐ Pregnancy Discrimination Act of 1978, codified at 42 U.S.C. § 2000e(k), as amended, Civil Rights Act of 1964, and the Civil Rights Act of 1991, for employment discrimination based on pregnancy.

5. Venue is invoked pursuant to 28 U.S.C. s 1391.

6. Defendant's conduct is discriminatory with respect to the following (check all that apply):

- (A) ☐ My race or color.
- (B) ☐ My religion.
- (C) ☒ My sex (or sexual harassment).
- (D) ☐ My national origin.
- (E) ☐ My pregnancy.
- (F) ☐ Other: _____

7. The conduct complained of in this action involves:

- (A) ☐ Failure to employ.
- (B) ☐ Termination of employment.
- (C) ☐ Failure to promote.
- (D) ☐ Unequal terms and conditions of employment.
- (E) ☐ Reduction in wages.
- (F) ☐ Retaliation.
- (G) ☒ Other acts as specified below:

I am female. Because of this
I have been discriminated.

8.

FACTS

Set forth the facts of your case which substantiate your claims. List the events in the order they happened, naming defendants involved, dates and places.

Note: You must include allegations of wrongful conduct as to EACH and EVERY defendant in your complaint. (You may use additional sheets as necessary).

I began my employment at Avis Budget Group December 2006.
my work was satisfactory.

My supervisor Eddie Garriega and Operational Mgr.
at this time. MR. Garriega began sexually harassing me.
Mr. Eddie Garriega Touched me inappropriately.
He would run his finger up and down my buttocks

Two or three a day.

In April 2013, I complained about Mr. Garriega
conduct. Mr. Garriega conduct continued.

May 2, 2013 I quit

9.

CAUSES OF ACTION

Note: You must clearly state each cause of action you assert in this lawsuit.

FIRST CAUSE OF ACTION

SECOND CAUSE OF ACTION

THIRD CAUSE OF ACTION

10. I filed charges with the New York State Division on Human Rights, the New York City Commission on Human Rights or Equal Employment Opportunity Commission regarding the alleged discriminatory acts on or about:

JULY 24, 2013

(Provide Date)

11. The Equal Employment Opportunity Commission issued a Notice-of-Right-to-Sue letter (**copy attached**) which was received by me on or about:

(Provide Date)

12. The plaintiff is an employee within the meaning of 42 U.S.C. § 2000e(f).
13. The defendant(s) is (are) an employer, employment agency, or labor organization within the meaning of 42 U.S.C. § 2000e(b), (c), or (d).
14. The defendant(s) is (are) engaged in commerce within the meaning of 42 U.S.C. § 2000e(g).

15. **PRAYER FOR RELIEF**

WHEREFORE, plaintiff(s) request(s) that this Court grant the following relief:

Momentary Compensation
Restores Pension

I declare under penalty of perjury that the foregoing is true and correct.

DATED: NOV 04 2016

Ernestine Banks

Signature of Plaintiff(s)
(all Plaintiffs must sign)

02/2010



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Buffalo Local Office

6 Fountain Plaza, Suite 350
Buffalo, NY 14202
(716) 551-4442

John E. Thompson, Jr.
Director

Charge No:
525-2013-00654

Charging Party
Ernestine Banks
587 Broadway
Apt. Q6
Menands, NY 12204

Respondent
Avis Budget Car Rental LLC
6 Sylvan Way
Parsippany, NJ 07054
Attn: Michael K. Tucker
General Counsel

DETERMINATION

I issue the following determination on the merits of the charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964 ("Title VII") and all requirements for coverage have been met. The Charging Party alleged that she was discriminated on the basis of sex.

Charging Party has articulated in her charge of discrimination that during her employment she was sexually harassed by Respondent's Operational Manager Eddie Garriega. Charging Party alleged that she reported the sexual harassment by Mr. Garriega to Respondent management. Charging Party alleged that despite reporting Mr. Garriega's conduct, Respondent failed to take action and Mr. Garriega continued to sexually harass her. Charging Party alleged that because of the conduct of Respondent and its employees, she was constructively discharged on May 2, 2013.

Charging Party has established a prima facie case of employment discrimination under Title VII with respect to harassment.

Once a prima facie case has been established by the Charging Party in a complaint of employment discrimination, the burden of proof shifts to the Respondent in the matter to provide a non-discriminatory justification for the course of conduct it has engaged in.

On August 16, 2013, Respondent was sent notice and the charge of discrimination. On that date, Respondent was asked to provide a response to Charging Party's allegations on or before August 30, 2013. Respondent has been contacted on numerous occasions since August 30, 2013.

Letter of Determination
EEOC Charge: 525-2013-00654
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Respondent was specifically informed on September 4, 2014, that it risked an adverse determination should it not respond on or before September 15, 2014. To date the Respondent has made no attempt to contact this office and no response has been received.

Inasmuch as the Respondent has been afforded an opportunity to provide an appropriate response to the charge of discrimination and has failed to do so, the Commission, at this time, determines that said silence is an admission of the allegations made and exercises its discretion to draw an adverse inference with respect to such. The Commission assumes that anything that Respondent could submit would not support its position.

Accordingly Respondent is found to have engaged in employment discrimination in violation of Title VII with respect to disparate treatment, resulting in Charging Party's constructive discharge.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of Sections 706 and 709 of Title VII and Commission Regulations apply to information obtained during conciliation.

If Respondent declines to discuss conciliation or when, for any other reason, an agreement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A representative of this office will be in contact with each party in the near future to begin the conciliation process.

On Behalf of the Commission:

Date: SEP 25 2014



John E. Thompson, Jr., Director
Buffalo Local Office

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Ernestine Banks**
587 Broadway
Apt. Q6
Menands, NY 12204

From: **Buffalo Local Office**
6 Fountain Plaza
Suite 350
Buffalo, NY 14202



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

525-2013-00654

Jean E. Mulligan,
Investigator

(716) 551-4443

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

JAN 27 2015

Enclosures(s)

John E. Thompson,
Local Office Director

(Date Mailed)

cc:

Suzanne Slawski
EEO Specialist
AVIS BUDGET GROUP
6 Sylvan Way
Parsippany, NJ 07054

Daniel J. Moore, Esq.
HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, NY 14534

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do **not** relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.